HOUSE OF COMMONS
CANADA

REVIEW OF THE WITNESS PROTECTION PROGRAM

Report of the Standing Committee on Public Safety and National Security

Garry Breitkreuz, MP
Chair

MARCH 2008

39th PARLIAMENT, 2nd SESSION

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THE STANDING COMMITTEE ON PUBLIC SAFETY AND NATIONAL SECURITY

has the honour to present its

SECOND REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has reviewed the Witness Protection Program and has agreed to report the following:

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CHAPTER 1: INTRODUCTION

Witnesses play a critical role in all stages of criminal proceedings, from the initial reporting of a crime right through to the trial. The evidence they provide is often crucial to the conviction of offenders. In this context, it is no surprise that individuals facing investigation and criminal prosecution may attempt to frustrate the administration of justice by intimidating witnesses and/or their families. Experts believe that, if there were no measures to protect witnesses and their families against intimidation, many people would be reluctant to cooperate with the authorities, and that this state of affairs could cause the justice system to become paralyzed in some cases.(1)

Various measures to protect vulnerable and threatened witnesses are used across the country, from the simplest police and legal protection to the most complex. This report examines one of the measures implemented by the federal government to provide long-term protection to witnesses whose physical safety is in jeopardy because they are cooperating with the authorities. The federal Witness Protection Program, the focus of this report, is a last resort at the end of the protection continuum. That being said, all witness protection measures at the municipal, provincial, territorial and federal levels are indispensable in the fight against crime. The ability of a witness to cooperate with the authorities without fear of intimidation or reprisal is essential to maintaining the rule of law.

1. COMMITTEE MANDATE AND APPROACH

In April 2007, media attention surrounding an individual in the Witness Protection Program who was charged with murder while under the protection of the Royal Canadian Mounted Police (RCMP) prompted the Committee to undertake a review of the Program. Although the Committee endeavoured to determine whether changes should be made to the Program to prevent the recurrence of similar incidents, its study was not limited to the examination of this case. On 29 March 2007, the Committee adopted a broad mandate to "review the RCMP's role in the Witness Protection Program."(2)

From 19 April 2007 to 4 February 2008, the Committee held seven meetings during which two lawyers involved in witness protection cases in Canada; three experts from Canada, the United Kingdom and the United States; and representatives from the RCMP, the Canadian Association of Chiefs of Police, Justice Canada and the Commission for

(1) Gregory Lacko, *The Protection of Witnesses*, International Cooperation Group, Department of Justice Canada, 2004 (http://justice.gc.ca/en/ps/inter/protect_witness/WitnessProtection-EN.pdf).

(2) *Minutes of Proceedings*, 29 March 2007 (http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=199488&Lang=1&PARLSES=391&JNT=0&COM=10804).

Public Complaints Against the RCMP all shared their points of view (For the list of witnesses, see Appendix A).

This report summarizes the information gleaned from the Committee's review of the Witness Protection Program. It covers the origins of the Program, its role in relation to the series of protective measures for vulnerable and threatened witnesses, its operation and administration, key concerns raised during the hearings, and our own comments and recommendations. Following consideration of the testimony heard, the Committee finds that it is time to renew the *Witness Protection Program Act* (WPPA)[3] so that the Witness Protection Program is more accessible, effective and transparent.

2. ORGANIZATION OF THE REPORT

The report has four chapters, including this chapter. The second chapter gives an overview of the range of protective measures available to vulnerable witnesses in danger in Canada. The third chapter describes the origins of the Witness Protection Program and its administration, and presents the information collected by the RCMP since the adoption of the WPPA in 1996. The final chapter presents the Committee's recommendations, which aim to provide witnesses, whose safety is in jeopardy because of their cooperation in investigations or cases involving serious crimes, with access to a more effective and transparent Witness Protection Program. The recommendations also aim to encourage cooperation among the many stakeholders involved in protecting vulnerable and threatened witnesses in Canada.

(3) *Witness Protection Program Act*, S.C. 1996, c. 15. The Act can be found at Appendix C of this report.

CHAPTER 2: THE VARIOUS WITNESS PROTECTION MEASURES IN CANADA

The trust witnesses have in the legal system is essential to maintaining the rule of law. All those with information of possible interest to the police who fear for their safety must have a level of protection suited to their needs. Protection must be given to both children and adults who unwittingly witness a crime or who participated in a crime and wish to cooperate with the authorities. The United Nations Office on Drugs and Crime supports this finding in its in-depth February 2008 report on internationally recognized good practices for the protection of witnesses.(4) The report states that safety measures must be considered for any person who believes they are in danger because of their cooperation with the authorities. Canada uses various measures to protect vulnerable and threatened witnesses. This chapter gives an overview of the protective measures available in Canada.

1. OVERVIEW OF WITNESS PROTECTION MEASURES IN CANADA

The evidence heard during our review suggests that the vulnerability of witnesses depends on various factors, particularly the age of the witness and the type of crime under investigation. It is generally recognized that witnesses involved in investigations concerning criminal and terrorist organizations are the target of serious intimidation; children are also targeted because they are perceived as being easy to intimidate. This information is clearly useful in preventing intimidation and allowing authorities in contact with these witnesses to adapt available protection to their situation.

To encourage and facilitate the cooperation of vulnerable and threatened witnesses, Parliament has established a series of legal protective measures that may be used in court, including the following options set out in section 486 of the *Criminal Code*:(5)

- the possibility of authorizing that testimony be given outside the courtroom, either by closed circuit television or from behind a screen;

- the possibility of having one or more members of the public removed from the courtroom for the entire duration or part of the trial;

(4) United Nations Office on Drugs and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, New York, 2008.

(5) For detailed information on special protective measures, consult the Policy Centre for Victim Issues, Department of Justice Canada, at http://canada.justice.gc.ca/en/ps/voc/index.html.

- the possibility of imposing a publication ban in order to prevent the publication, dissemination or transmission of any information that could reveal the identity of a victim or witness;

- the possibility of appointing counsel to conduct cross-examination when the accused is acting as his or her own counsel; and

- the possibility of allowing victims under 18 to testify in the presence of a support person.

Individuals whose safety is jeopardized because of information or testimony they have agreed to give as part of an investigation or a criminal case may also be afforded by municipal, provincial or federal police temporary protective measures adapted to their needs and the situation. These measures can take a variety of forms: police escort to court, telephone surveillance, short-term financial assistance or temporary housing for witnesses and their family in a safe house. According to the information gathered by the Committee during its review, these temporary protective measures do not necessarily require the witness to sign an agreement with the police and are not always governed by a specific policy.

That being said, some Canadian provinces and municipalities, including British Columbia, Ontario, the Sûreté du Québec and the City of Montreal Police, have implemented official witness protection programs. These programs provide a range of temporary protective measures for vulnerable witnesses in danger before, during and after a trial. The Ministry of the Attorney General of Ontario's Practice Memorandum respecting Ontario's Witness Protection Program, submitted to the Committee on 25 May 2007, states that the Ontario program "does not provide long-term financial assistance." The Ontario Witness Protection Program is a "temporary relocation and assistance program," administered by the Attorney General, which "provides time-limited funding to assist in the protection, maintenance and relocation of a witness and/or family members where doing so is in the best interests of the administration of justice."(6) It is important to note that these official programs were not governed by any legislation at the time of the Committee's review.

Parliament has also established extrajudicial protection measures for witnesses whose safety could be jeopardized because they are cooperating with the authorities. Those protective measures are set out in the Witness Protection Program Act (WPPA). Adopted by Parliament in June 1996, the WPPA creates the legislative basis for the Witness Protection Program administered by the RCMP.

(6) The Ministry of the Attorney General of Ontario's Practice Memorandum respecting Ontario's Witness Protection Program (PM (2007) No. 1) is presented in Appendix D.

This program, which provides for the long-term relocation of witnesses in serious danger and an identity change,[7] is, in the opinion of the witnesses who appeared before the Committee, of particular importance in the fight against organized crime and terrorism. This is because criminal organizations have, in the majority of cases, "many ways of gathering information"[8] on their accusers. Traditional investigative methods are rarely effective in infiltrating these types of organizations because of their secret nature. Law enforcement agencies must, therefore, use informers and/or human sources, who themselves are often members of the criminal organizations under investigation or on trial and who, because of their cooperation with the authorities, are in very serious danger and require long-term protection, sometimes for life.

While the Committee's mandate is confined to the review of the Witness Protection Program administered by the RCMP, it wishes to reiterate that all witness protection measures in Canada, whether at the municipal, provincial, territorial or federal level, are indispensable in the fight against crime and essential to maintaining the rule of law. The Committee finds that, because police officers are often the first to come into contact with vulnerable and threatened witnesses, it would be useful for them to have more information on witness intimidation so as to prevent it and to identify vulnerable and threatened witnesses in need of protection. The Committee also believes that more information should be made available to Canadians about the various initiatives put in place to protect those who cooperate with the authorities.

(7) Victims of family violence whose safety is in serious jeopardy may also access a federal program allowing them to change their identity and settle in a new community. The program, called New Identities for Victims of Abuse (NIVA), is administered by Service Canada (Human Resources and Social Development Canada). Unlike the federal witness protection program, NIVA does not require the victim to cooperate with authorities in the prosecution of the abuser and does not provide any financial assistance.

(8) Anne-Marie Boisvert, *La protection des collaborateurs de la justice: éléments de mise à jour de la politique québécoise*, final report presented to the Quebec Ministry of Public Security, June 2005, p.11. (Available in French only).

CHAPTER 3: THE FEDERAL WITNESS PROTECTION PROGRAM

Compared with municipal and provincial witness protection programs, the Program administered by the RCMP is a last resort and much more limited in scope. This program is for witnesses requiring long-term protection. In the vast majority of cases, this involves long-term relocation and/or an identity change. The witnesses heard by the Committee were unanimous on one point: changing a witness's identity is an extreme measure to be used in special circumstances only. In a report commissioned by the Quebec Ministry of Public Security,(9) Anne-Marie Boisvert notes that "identity change is a measure of last resort, extreme, difficult to implement from an administrative standpoint, and especially challenging for, and demanding on, the witnesses and their families in the short, medium and long-terms". For protectees, "secure identity changes require lying about their past and where they came from; they must carve off their personal history; their isolation and solitude inevitably result in the inability to form intimate, honest and real interpersonal relationships."(10)

This chapter describes the evolution of the federal Witness Protection Program and its administration and presents the data collected by the RCMP since the adoption of the WPPA in 1996.

1. THE WITNESS PROTECTION PROGRAM FROM 1984 TO 1996

The RCMP launched the Witness Protection Program in 1984(11) in an effort to encourage the cooperation of witnesses in possession of information that could help the RCMP prosecute members of organized crime. The Program was created at a time when the fight against national and international drug trafficking rings had become a major priority.(12)

(9) On 23 January 2004, the Quebec Ministry of Public Security commissioned Ms. Boisvert to study the various witness protection programs around the world. Her final report, entitled *La protection des collaborateurs de la justice : éléments de mise à jour de la politique québécoise*, was presented to the Minister in June 2005, p. 33. (Available in French only).

(10) Ibid.

(11) It is interesting to note that the RCMP protected witnesses prior to 1984. Lacking an official program, the RCMP decided on a case-by-case basis whether certain witnesses required special protection. The first of these cases dates back to the 1970s. *WPPA Annual Report 1996-1997*.

(12) Gregory Lacko, *The Protection of Witnesses*, International Cooperation Group, Department of Justice Canada, 2004 (http://justice.gc.ca/en/ps/inter/protect_witness/WitnessProtection-EN.pdf).

Until 1996, the RCMP program was governed by a series of internal policies and guidelines that were kept secret in order to prevent criminals from discovering the methods used by the RCMP to protect the individuals who had disclosed information about them. The RCMP viewed secrecy as essential to the safety of protectees.

The administration of the Program was widely criticized. Protectees and other people concerned about witness protection argued that those responsible for enforcing the Program were not sufficiently accountable for its administration. Furthermore, many people felt that the RCMP was not respecting the protection agreements.

Over time, serious disagreements arose between the RCMP and some Program protectees. Unable to resolve the disagreements internally, dissatisfied protectees went so far as to publicize their grievances, thereby possibly even jeopardizing their own safety.(13)

On 1 February 1994, in response to numerous criticisms,(14) MP Tom Wappel introduced in the House of Commons Bill C-206, *An Act to provide for the relocation and protection of witnesses*. The aim of the bill was to make the RCMP's Witness Protection Program official by giving it a legislative basis, and to make it more accessible and transparent. Mr. Wappel thought it essential to respond to the absence of clear, precise rules regarding the administration of the Program in order to avoid misunderstandings.

Bill C-206 received strong support in the House of Commons. Although the government supported the bill's objectives, it nevertheless believed that more comprehensive studies were needed to assess the cost and effectiveness of the proposed modifications.

In 1995, Mr. Wappel did not proceed with the bill when the Solicitor General of Canada tabled similar legislation in the House of Commons. This was Bill C-78, the *Witness Protection Program Act*, which was adopted by Parliament in 1996, coming into force on 20 June of that year.

(13) Detailed information concerning certain grievances is outlined in Lacko (2004).

(14) In his presentation of the bill, Mr. Wappel noted: "Mr. Speaker, thousands upon thousands of people have signed petitions asking this House to set up a witness protection program that has been mandated and is the responsibility of this House through the minister in charge. That currently is not the practice. There are ad hoc witness protection plans across the country run by various police forces, including the RCMP. This bill proposes to formalize the arrangement and have it administered by the federal government." Debates of the House of Commons, Routine Proceedings, 1 February 1994 (http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2332268&Mode=1&Parl=35&Ses=1&Language=E).

2. THE PROGRAM AFTER THE ADOPTION OF THE WPPA

Enactment of the WPPA created, for the first time, a legislative basis for the RCMP's Witness Protection Program. It identified the Program objective, namely, to promote respect for the law by making it easier to protect persons involved directly or indirectly in providing assistance in relation to activities carried out by any law enforcement agency or international criminal court or tribunal in respect of which an arrangement or agreement with the RCMP has been reached.(15) The Act also extended the scope of the Program by granting access to all Canadian law enforcement agencies, as well as those from around the world with which agreements have been reached.

All Canadian law enforcement agencies(16) have access to the Program on a cost-recovery basis. However, once a police force determines that a new identity is required to protect a witness and/or family members, the police force concerned must submit an application to the RCMP in order to register that person in the federal Program. In such cases, the rules of the federal Program apply and it is possible that the RCMP could refuse to admit another police force's witness. This requirement can be explained by the fact that some of the documents needed for an identity change, such as social insurance numbers, criminal record numbers and passport must be obtained from the federal government.(17) It can be assumed, then, that anyone who has ever received a new identity in the context of a witness protection program in Canada has, at one time or another, been admitted to the RCMP's Witness Protection Program.

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(15) Section 14 of the WPPA.

(16) Police services are the responsibility of all three levels of government. Federally, the RCMP is responsible for enforcing federal laws apart from those listed in the *Criminal Code*, as well as delivering national services such as forensic laboratories, forensic identification and the Canadian Police College. The provinces and territories are responsible for enforcing provincial legislation and *Criminal Code* provisions. All provinces and territories are responsible for provincial/territorial and municipal police services. When a province or territory has municipal police services, it is up to those services to enforce the provisions of the *Criminal Code*, the provincial laws and municipal bylaws within their territory. At present, Quebec, Ontario, and Newfoundland and Labrador are the only provinces that have a provincial police force. Newfoundland and Labrador, the Yukon, the Northwest Territories and Nunavut are the only areas of Canada that do not have their own municipal police services. The RCMP provides provincial/territorial and municipal police services under a contract in the provinces and territories that do not have their own police force. For detailed information concerning the structure of police services in Canada, please consult the report published by the Canadian Centre for Justice Statistics, *Police Resources in Canada, 2007*, no. 85-225-XIF, November 2007, (http://www.statcan.ca/english/freepub/85-225-XIE/85-225-XIE2007000.htm).

(17) Assistant Commissioner Raf Souccar stated: "If a police force other than the RCMP has an individual who has helped them in a case and they would like to relocate that person and therefore would require new identity for that individual, of course, in addition to a provincial driver's licence and so on, they require a passport, social insurance card, and the federal documents. So they have to come through us. For them to come through us and be given the right documentation, we have to accept them into the program. In order to accept them into the program, we have to look at the case itself and determine whether or not that individual is suitable for the Witness Protection Program under the criteria in section 7." *Evidence*, 19 April 2007.

(a) Administration

Under the WPPA, the administration of the Program is the responsibility of the Commissioner of the RCMP. However, the WPPA allows the Commissioner to delegate certain powers to other members of the organization. During the Committee's review, the Assistant Commissioner of the RCMP, Federal and International Operations, Raf Souccar, was the officer responsible for admitting and terminating protectees to and from the Program. It was also his responsibility to determine the extent of protection to be provided to protectees.(18)

(b) Protection

The protective services provided to protectees through the Witness Protection Program are also set out in the WPPA. Such services include moving, housing, provision of a new identity, and psychological and financial support. As stated earlier, witnesses in the Program face danger serious enough to warrant, in the vast majority of cases, an identity change and relocation, sometimes of their family as well.

(c) Admission

To ensure consistency in the processing of witness protection cases throughout the country, legislators also thought it worthwhile to list in the WPPA the Program eligibility criteria and factors to consider in the assessment of candidates. To be admitted to the Program, a witness must be recommended by a law enforcement agency or an international criminal court or tribunal with which an agreement has been reached. The witness must also provide the information required by regulation, and an agreement must be entered into between the Commissioner and the witness setting out the obligations of both parties.(19)

For the RCMP, a protection agreement is deemed to include the obligation to take any reasonable steps necessary to provide the protection referred to in the agreement. The protectee, on the other hand, is obligated to give all information or evidence required by the investigation or prosecution; to meet all financial and legal obligations; to refrain from the commission of federal offences or activities that may compromise the security of the protectee, another protectee, or the Program itself; and to accept and give effect to reasonable requests from the Commissioner in relation to protection provided to the protectee and his or her obligations (section 8 of the WPPA).

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(18) Raf Souccar, *Evidence*, 19 April 2007.

(19) Under the WPPA, the Commissioner may, in a case of emergency, and for not more than 90 days, provide protection to a person who has not entered into a protection agreement (section 7 of the WPPA).

Before admitting a protectee, the Commissioner must also consider (section 7 of the WPPA):

- the nature of the risk to the security of the witness;
- the danger to the community if the witness is admitted to the Program;
- the nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter;
- the value of the information or evidence given or agreed to be given or of the participation by the witness;
- the likelihood of the witness being able to adjust to the Program;
- the cost of maintaining the witness in the Program;
- alternative methods of protecting the witness without admitting the witness to the Program; and
- such other factors as the Commissioner deems relevant.

When an individual is admitted to the Program, it is presumed that he or she will remain a lifelong protectee. Protectees are therefore encouraged to support themselves and to become integrated into their new life as soon as possible.

(d) Termination of Protection

The Commissioner may terminate the protection provided to a protectee at any time if there is evidence of a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the Program, or a deliberate and material contravention of the obligations of the protectee under the protection agreement (section 9 of the WPPA). In such instances, the Commissioner must notify the protectee of the impending termination of his or her protection and the reasons justifying that decision.[20] The protectee shall be given 20 days from the moment he or she receives notification to dispute the decision. This timeframe can be extended at the protectee's request, if he or she needs more time to prepare his or her defence.[21]

(20) Ibid.

(21) David Bird, *Evidence*, 19 April 2007.

Participation in the Witness Protection Program is voluntary. Thus, a protectee may decide to leave the Program at any time. During his testimony, Chief Superintendent Ogden informed the Committee of the main reasons given by protectees who left the Program between 2004 and 2007. He said:

> We had 19 voluntary withdrawals from the Program in a three-year period, from April 2004 to April 2007. Out of that, we had three who returned to the area of threat. So they made the conscious decision to voluntarily withdraw from the Program and go back. We had one who thought it was too strict for family visits. One agreement was breached for association with gang members. One witness didn't want to comply with the terms of the protection agreement any longer. We had one who was charged with theft under $5,000. We had cases where people were using drugs, and they didn't want to stop, so they withdrew from the program.(22)

Lastly, it should be noted that when a protectee decides to leave the Program, or if the RCMP terminates his or her protection, the protectee's family will continue to be protected.

(e) Protecting the Identity of Protectees

The WPPA clearly states that no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee. However, there are certain exceptions.(23) Protectees and former protectees can, under the Act, disclose information about themselves if such disclosure does not endanger the safety of another protectee or former protectee and does not compromise the integrity of the Program. Information about the location or a change of identity of a protectee or former protectee may be disclosed by the Commissioner under the following conditions: with the consent of the protectee or former protectee; if the protectee or former protectee has previously disclosed the information; if the disclosure is essential in the public interest for purposes such as the prevention of the commission of a serious offence or national security or national defence or where there is reason to believe that the protectee or former protectee has been involved in the commission of an offence and can provide material information or evidence in relation to the offence; or in criminal proceedings where the disclosure is essential to establish the innocence of a person.

The Committee learned that, since 1996, a number of protectees have involuntarily revealed that they were participating in the Program. However, Assistant Commissioner Souccar could not give the Committee the exact number of involuntary violations that occurred since the Program was created in 1996. He also emphasized that he did not know if the RCMP compiles such statistics. David Bird, Legal Counsel for the RCMP Legal Services, noted that there have been cases in which protectees have had their identities

(22) Derek R. Ogden, *Evidence*, 19 April 2007.

(23) Section 11 of the WPPA.

disclosed as a result of court proceedings.[24] A review of the annual reports tabled in Parliament shows that, in fiscal year 2002-2003, the RCMP involuntarily revealed information concerning a protectee in court, thereby jeopardizing the safety of that individual.[25] The RCMP managed to resolve the matter "to the satisfaction of all concerned parties."[26]

Gerald Shur, Senior Associate Director (retired) of the Federal Witness Security Program, told the Committee that the Canadian program is much more restrictive regarding the disclosure of information concerning a current or past protectee than the American program. He stated: "We have a great deal of flexibility in our program [...] to make determinations such as whether we should disclose or not disclose, when it is appropriate, what the rules would be, and so on."[27] When a Committee member asked whether the American program made it possible to disclose information to the family of a victim harmed by a protectee in the Program, he replied:

> […] with the assumption that the person commits a crime and the relatives of the victim wish to know who that person was, under our statute we have a victims compensation requirement – that is, we must offer to the family of any victim who is killed up to $25,000, I think, to cover medical expenses or funeral expenses, and so on. They certainly would have a right to know who that person really was who had killed their relative.
>
> The one complicated area is that if disclosing that information would compromise an ongoing investigation, we might delay it for a bit. But that would happen so rarely. I can't recall it happening, as a matter of fact; it's just a potential.
>
> By disclosing the name to the family, you give them some peace. The cost to the United States government to do that simply means relocating again the family of the witness who had committed the murder, so that the family of the victim has the peace of closure and the family of the witness has the safety of being relocated again, and the loss comes in a money sense to the United States government.[28]

According to David Bird, Counsel, RCMP Legal Services, section 11 of the WPPA imposes a "high onus" on the Commissioner to determine if it is in the public interest to disclose certain information. He continued:

> The Commissioner cannot delegate that decision. […] Parliament obviously intended for this to be at the highest level of the RCMP.[29]

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(24) *Evidence*, 19 April 2007.

(25) WPPA Annual Report 2002-2003.

(26) Gregory Lacko (2004).

(27) *Evidence*, 31 May 2007.

(28) Ibid.

(29) *Evidence*, 7 June 2007.

Barry Swadron believes that this decision should not be made by the Commissioner. He said to the Committee:

> I don't think the commissioner should be deciding what's in the public interest; I think it should be elected members of Parliament or ministers in the cabinet. The commissioner will not necessarily decide what is in the public interest; he will decide what is in the police interest, because he has to be true to himself. (30)

The Committee recognizes the importance of this matter, but finds it has not heard enough evidence to make an informed decision. Perhaps the decision to disclose such information should be the responsibility of a qualified multidisciplinary team, rather than the Commissioner of the RCMP. The Committee suggests that this matter be studied and debated at the next federal-provincial-territorial meeting of ministers responsible for Justice and Public Safety.

(f) Individuals to be Protected

The federal Witness Protection Program is intended to protect various types of witnesses. The WPPA defines a witness as a person who has given or agreed to give information or evidence, or has participated or agreed to participate in a matter relating to a criminal investigation or prosecution and who may need protection, along with anyone who, by virtue of being associated with the witness, may also require protection (section 2 of the WPPA). This could be a parent, child or any other person whose safety could be jeopardized by the witness's cooperation with the authorities. In his testimony before the Committee, Assistant Commissioner Souccar emphasized that anyone associated with the protectee whose life or safety may be in jeopardy would be offered the opportunity to participate in the Program. It is up to the RCMP to determine if an individual's safety is "seriously jeopardized."

The police officers who appeared before us during the Committee's review noted that the witnesses benefiting from the Witness Protection Program belong to two main groups: informers (informant sources and informants) and police agents (agent sources and agents)(31)

> An *informant source* is a person who provides information gained through criminal activity or association with others involved in criminal activity. This source would generally not become a witness or require protection as a result of his/her investigational involvement. Payments to an informant source are expenses and awards.
>
> An *agent source* is a person tasked by investigators to assist in the development of target operations. Direct involvement and association with a target may result in his/her

(30) Senior Member, Swadron Associates, *Evidence*, 5 June 2007.

(31) These definitions are from the RCMP *Operational Manual*, 31.1: Types of Sources and Use Guidelines.

> becoming a material and compellable witness, i.e., a source used to introduce undercover operators, act as a courier for controlled deliveries or act in place of an RCMP undercover operator by obtaining evidence.

Assistant Commissioner Souccar emphasized the importance of distinguishing between agent sources and informant sources. He pointed out that, unlike informants, "agents — we [the RCMP] end up owning them, to the extent that they have to testify in court. They become compellable." Furthermore, it must be recognized that, "while information provided to police by informants is afforded a certain degree of protection by the courts, information from persons acting on behalf of the police, referred to as agents, is not protected and is revealed in its entirety to the accused party."(32)

Informant sources and agent sources are not necessarily criminals. They can be, in some cases, law-abiding citizens who happen to have information that the police can use. That being said, the evidence heard by the Committee seems to suggest that the vast majority of informant sources and agent sources registered in the Witness Protection Program are from the criminal milieu.

For an informant to obtain the status of an agent, the RCMP must proceed with an in-depth assessment of the case. The purpose of that assessment, conducted by RCMP staff trained in the field of witness protection,(33) is to determine the quality of candidates and their ability to respect a potential contract with the RCMP, as well as to determine "whether we [the RCMP] can afford to own that person … to the extent of admitting her or him into the program and looking after her or his expenses."(34) Apparently, many cases are eliminated at the assessment stage. According to Chief Superintendent Ogden:

> We have a number of people who are informants and who want to come forward and volunteer to be a police agent, but a lot of those people are screened out for a number of different reasons. When we do use an agent, that situation normally involves a lot of police personnel, and it's usually one fairly high-level targeted operation. We only have the capacity to run a limited number of these operations at a time. We try to be as careful as we can with the people we bring into that agent status, because we want doing so to be to our greatest benefit.(35)

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(32) Raf Souccar, *Evidence*, 19 April 2007.

(33) When he appeared on 7 June 2007, Chief Superintendent Ogden noted that the RCMP has dedicated a great deal of time to training its staff since 2003: "We now have a complete training package on human source development and human source handling. It starts with an eight-hour Internet course that everybody can take at the RCMP; it's a mandatory training course now in Regina. The next step is a five- or six-day course focusing strictly on human source development. We also have a course on human source development for supervisors. We recognize that the whole area of human source development is important; we have to have people who are trained and who understand that when somebody brings us information, we have to take independent steps on our own to corroborate the material being brought in. We have to have some method to evaluate the information that's being provided to us." *Evidence*, 7 June 2007.

(34) Ibid.

(35) Ibid.

According to the evidence heard by the Committee, agent sources in particular belong, for the most part, to the criminal milieu. Assistant Commissioner Souccar explained to the Committee why this is:

> They're individuals who have immersed themselves, over a lifetime sometimes, with a criminal element. That's where they become useful to us, because when we try to infiltrate a criminal organization, sometimes members of that criminal organization will not trust anybody they haven't known since childhood. Telephone intercepts are not always beneficial, because they guard themselves very much on the phone. Surveillance is sometimes not very effective, because they're very surveillance conscious. They don't trust anybody; they only talk to their circle.(36)

It is important to point out that their admission to the Witness Protection Program does not give individuals any immunity, and this is true for offences committed before or after their admission to the Program. As pointed out by Assistant Commissioner Souccar during his testimony: "Protectees remain subject to all Acts of Parliament, like any other Canadian citizen […] . Their existing criminal history remains with them […] . Their criminal history will follow them to their new identity."(37)

(g) Transparency

To ensure transparency, under the WPPA, the Commissioner of the RCMP is required to produce an annual report presenting general information on the administration of the Witness Protection Program. This requirement recognizes that the disclosure of detailed information could endanger the safety of protectees and the integrity of the Program. The annual report is tabled in Parliament by the Minister of Public Safety.

3. AVAILABLE DATA ON THE WITNESS PROTECTION PROGRAM

At the time of the Committee's review, there were approximately 1,000 protectees in the Witness Protection Program, including 700 managed by the RCMP and 300 from other law enforcement agencies.(38) We learned that almost 30% of them had not acted as witnesses for the prosecution. They were accepted into the Program because of their relationships to witnesses.(39)

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(36) Raf Souccar, *Evidence*, 19 April 2007.

(37) Ibid.

(38) Chief Superintendent Derek R. Ogden, Director General, Drugs and Organized Crime, Federal and International Operations, Royal Canadian Mounted Police, *Evidence*, 19 April 2007.

(39) Ibid.

In June 2007, the Committee was informed that, since the Act was passed in 1996, 27 foreign nationals had been accepted into the Program through a memorandum of understanding (MOU) with the RCMP. The RCMP had signed four MOUs, two with other countries and two with international courts.(40) In a letter submitted to the Committee, the RCMP was unable to disclose the countries or courts involved, emphasizing that this information could compromise the safety of the foreign nationals being protected in Canada, given the extremely small numbers (one or two) of international requests for assistance each year.

(a) Admissions to the Program

Analysis of the annual reports (see Table 1, below) reveals some interesting details about the Witness Protection Program over time. First, we note a considerable variation in the number of admissions to the Program since it was created in 1996. According to the most recent annual report,(41) 66 protectees were accepted into the Program between 1 April 2005 and 31 March 2006, compared with 37 in the previous fiscal year – an increase of about 78%. Comparing the 1996-1997 figures (for the period from 20 June 1996, when the WPPA came into effect, to 31 March 1997) to those for 2005-2006, we see a substantial decline in admissions, from 152 in 1996-1997 to 66 in 2005-2006. Since the WPPA was passed, the lowest number of admissions recorded by the RCMP was in 2001-2002, when the RCMP accepted only 29 protectees into the Program.

(40) Letter submitted to the Committee in response to questions asked during the meeting on 7 June 2007, RCMP, 27 June 2007.

(41) The annual report is a requirement under section 16 of the WPPA.

Table 1
Witness Protection Program
1996 to 2006

Number	1996-1997[42]	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
Admissions*	152	110	92	72	37	29	61	34	37	66
New cases	100	81	70	57	57	62	103	72	86	53
Refusal of protection by witnesses	5	2	2	4	23	11	13	11	11	15
Admissions from other police forces	30	22	23	12	17	23	34	41	34	35
Secure identity changes	46	19	36	11	14	24	26	52	35	54
Relocations outside province of origin	71	51	30	25	14	23	25	27	25	22
Relocations within province of origin	31	9	9	15	15	12	20	14	15	9
Voluntary terminations	4	9	6	7	8	9	13	12	16	21
Involuntary terminations	3	4	7	2	1	1	3	3	8	7
Instance of failure of protection caused by RCMP	0	0	0	0	0	0	1	0	0	0
Cost of Program**	$1,579,869	$3,058,966	$3,794,478	$1,942,983	$1,626,428	$1,538,658	$3,397,647	$1,961,318	$2,565,288	$1,932,761

*The category “number of admissions to Program” includes all protectees accepted into the Program during the fiscal year, including persons related to a primary witness.

** This amount covers only those expenditures directly related to protective measures provided to witnesses. It does not include the salaries of RCMP members or the cost of investigations or subsequent legal costs.

(42) The 1996-1997 Annual Report covers the period from 20 June 1996 (the date the WPPA came into effect) to 31 March 1997. The annual reports for the remaining fiscal years cover the period from 1 April to 31 March.

(b) Costs

Table 1 also shows important variations in the cost of the Program. We should first point out that the "cost" given in the annual reports is only a tiny part of the cost of protecting witnesses. This amount covers only those expenses directly related to the protection services offered to protectees being managed by the RCMP. Moreover, it does not include the salaries of RCMP members involved in the protection of protectees or the cost of investigations or subsequent legal costs. The RCMP informed the Committee that it intended to give more detailed data on Program costs in its 2006-2007 annual report.

The table shows that the Program cost cannot be explained simply by the number of protectees accepted into the Program in a year, as a simple comparison of the last two years demonstrates. In 2004-2005, the Program accepted 37 new protectees, as compared with 66 in 2005-2006. And yet the Program's annual cost was $2,565,288 in 2004-2005, and $1,932,761 in 2005-2006. These cost variations result from a great many factors, including law enforcement activities, the individual circumstances of the witnesses requiring relocation, and the safety of their close friends and family. In his appearance, Assistant Commissioner Souccar noted important variations in costs depending on the individual witness. He said:

> The cost of relocating a witness varies tremendously, depending on the number of family members and the property in their possession. Furthermore, if the witness owns a house, it most be sold. If he owns a company, the assets must be liquidated. The costs vary considerably.(43)

Similarly, Chief Superintendent Ogden noted:

> [I]t's hard to give an average cost per case because they vary so much. […] The funding would change depending on what the requirements were around the witnesses we move. We may move witnesses who have had training and certificates in one certain area, and then once we move them and they assume their new identity, all that's lost, so we have to completely retrain them. They're starting from square one. They're starting a brand new life. So in some cases we may make agreements and say, okay, we'll agree to do this much training with you; we'll agree to make sure you're in a household that is similar to the one we took you out of, so that may be the type of house we buy for them, and the type of vehicle they drove before may be similar to the one they drive in the future, that type of thing.

(43) Raf Souccar, *Evidence*, 19 April 2007.

During his testimony, he also urged the Committee to put the costs into the broader context of the fight against organized crime. This is what he said:

> In some cases when we bring in a very valuable witness on an organized crime case, it may appear to be very expensive when you look at the actual cost of the award and the relocation. But when we put that in the context of what the police force will actually spend to investigate that particular group, when you think about the number of nights, perhaps, that we're eliminating in surveillance on a group, or of all the background work you have to do, we find, with the right witness, that we can quite often infiltrate that group at a level that allows us to do maximum damage to that organization in the shortest period of time.(44)

The significant cost of protection programs certainly plays a role in the finding by Anne-Marie Boisvert that most of the legislation she studied on witness protection programs "restricts the availability of these programs to investigations and prosecutions relating to the fight against serious crime, terrorism and organized crime."(45)

(c) Protection Refused

Table 1 also shows the large variations over time in the number of witnesses who refuse protection. The figures appear to have stabilized since 2001-2002, at between 11 and 15 refusals per year. According to witnesses who appeared before the Committee, the main reason given by people who refused to sign the protection contract was that the Program was too confining. Many witnesses were simply not prepared to leave their families and friends and make a new life in a new community. Similarly, the 2005-2006 annual report indicated that "The main reasons cited by witnesses for refusing to enter the Program were: numerous restrictions and an unwillingness to relocate."(46)

(d) Voluntary and Involuntary Termination

Since the WPPA was adopted, between four and 21 witnesses per year have decided to leave the Program. Their reasons are many, but the most frequent ones given were the Program's restrictions on family and friends and the difficulty of adapting to a new life. The number of voluntary terminations increased slightly from 16 in 2004-2005 to 21 in 2005-2006.

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(44) Derek R. Ogden, *Evidence*, 19 April 2007.

(45) Anne-Marie Boisvert, *La protection des collaborateurs de la justice : éléments de mise à jour de la politique québécoise*, presented to the Minister in June 2005, p. 12, (available in French only).

(46) Annual Report 2005-2006, op. cit.

Considerable variation has also been seen, since the WPPA was adopted, in the Commissioner's decisions to terminate the protection of protectees. Since 1996, between one and eight protectees have been released involuntarily from the Program each year, including seven during 2005-2006. According to the annual report, all seven decisions were made in light of "serious breaches of security by the witnesses."(47) In his appearance on 7 June 2007, Chief Superintendent Ogden informed the Committee that, from 1 April 2004 to 1 April 2007, protection was terminated in nine cases in which the protectee had committed a criminal offence. In his opinion, "it would be unrealistic to expect that none of the protectees would go on to commit further criminal offences."(48)

(e) Relocation

According to the information in the annual reports, most protectees relocate outside their province of origin. In 2005-2006, 22 protectees were relocated outside their province of origin as compared with nine who moved within their home province. Only in 2000-2001 did more witnesses relocate within their own province than outside it (15 and 14 respectively).

(f) Complaints and Civil Litigation

Between 20 June 1996 and 30 May 2007, the Commission for Public Complaints Against the RCMP (the Commission)(49) received 21 complaints relating to the Witness Protection Program and carried out five investigations. Table 2 shows the distribution of these complaints and investigations by Canadian province and territory.

(47) Ibid.

(48) *Evidence*, 7 June 2007.

(49) The Commission is an independent body created in 1988 to receive and review complaints concerning the conduct of members of the RCMP in the performance of their duties.

Table 2
Complaints and Reviews Concerning the RCMP Witness Protection Program, by Province and Territory, 20 June 1996 to 30 May 2007

Province	Complaints/Reviews Concerning the Witness Protection Program	
	Complaints	**Investigations**
British Columbia	11	1
Alberta	1	0
Saskatchewan	2	0
New Brunswick	0	0
Nova Scotia	0	0
Manitoba	2	1
NWT	0	0
Ontario	4	3
Yukon	0	0
Quebec	1	0
Newfoundland	0	0
Nunavut	0	0
PEI	0	0
TOTAL	21	5

It is important to note that most of the RCMP's contract services are provided in British Columbia and Alberta.

Source: Document submitted to the Committee by Paul E. Kennedy, Chair of the Commission for Public Complaints Against the RCMP, 1 June 2007.

In a document submitted to the Committee[50] the Commission presented a list of the 21 complaints received, broken down by the issues raised in each, pointing out that a complaint or review could, nevertheless, be classified in more than one category. According to this information, more than half of the complaints (12 of 21) concerned a refusal to admit witnesses into the Program, nine concerned treatment the protectees considered unsatisfactory, four concerned improper disclosure of information by the RCMP and four others concerned inadequate compensation.

Since 1996, the Commission has not received any complaints concerning crimes committed by protectees from victims or families of victims.

(50) Information Request by the Committee on Public Safety and National Security from the Commission for Public Complaints Against the RCMP, document submitted to the Committee on 1 June 2007.

CHAPTER 4: PROPOSED REFORMS

It is important to recognize right from the start that there is little information available for an in-depth analysis of the federal Witness Protection Program. Apart from the general information found in the annual reports, there are currently no data that would enable us to find out about the experiences of the Program's protectees or assess the value of their testimony in the prosecution or investigation that triggered their admission to the Program. Although the WPPA provides important information regarding the factors to be considered when deciding whether to admit a witness to the Program, the reasons that would justify exclusion from the Program and the mutual obligations of the witness and the Program administrator, very little information is available about current RCMP witness protection practices. This is hardly surprising, given that the protection of witnesses demands the greatest possible discretion, but it nevertheless constituted the major difficulty confronting us throughout our review.

A number of our questions have remained unanswered. Here are just some of them:

- What happens to children who undergo radical changes in their lives when one of their parents cooperates with the authorities?

- Could the Program accommodate a teenage member of a street gang whose safety was threatened because he/she had cooperated with the authorities?

- What percentage of witnesses who are admitted to the Program had ties to the criminal milieu before deciding to cooperate with the authorities? How many witnesses were inmates of the federal correctional system before their change of identity?

- What is the recidivism rate for prior offenders participating in the Program?

That being said, what we did learn from the evidence we heard made it clear that the federal Witness Protection Program serves primarily to protect people who have acted as either agent sources or informant sources for the police and who, because of their links with the criminal milieu, have been able to contribute to the success of an investigation or prosecution involving serious crimes. According to the police officers who appeared before us, reliance on testimony by criminals, whether agents or informants, is a necessary evil in fighting organized crime and terrorist groups, which, because of their closed nature, are difficult to penetrate by traditional investigative methods. If governments are prepared to accept this testimony as an essential means of effectively combating serious crime, they must also be prepared to take responsibility for the protection of informants and agents. As

Yvon Dandurand told the Committee, “The protection of such individuals therefore takes on great significance, even if it raises a number of practical, ethical and legal issues.”[51] He also pointed out that the reputation of the organizations responsible for witness protection has a direct impact on the ability of the police to recruit new informers and agents and thereby continue their war on serious crime. According to RCMP Assistant Commissioner Raf Souccar, a loss of confidence in the federal Witness Protection Program could paralyze the work of the police:

> Loss of confidence in the Witness Protection Program could have a very detrimental ripple effect. Witnesses would be reluctant to come forward, and police agents would refuse to provide assistance to our country’s most complex organized crime and national security investigations.[52]

Our witnesses were unequivocal that the Program is an essential tool in the fight against serious crime, organized crime and terrorism. However, our review made it possible to identify certain weaknesses in the Program that, in our opinion, justify amendments to the Act. The following sections of this chapter discuss these weaknesses and set out our recommendations for rectifying them.

1. PROMOTING FAIR AND EFFICIENT MANAGEMENT OF THE PROGRAM

(a) Create a clear distinction between investigations and prosecutions on the one hand and the Witness Protection Program on the other by setting up an independent Office at the Department of Justice

Witness protection programs vary considerably from country to country, depending on the need for protection and the historic, geographic, legal and social contexts. At our hearings, witnesses explained to the Committee that the most striking difference between programs involves the choice of the entity responsible for making decisions about the admission of witnesses. Nick Fyfe,[53] an expert in the field, said:

> There are significant differences between jurisdictions in relation to the role that the police, the judiciary and the government play in decisions about inclusion in protection programs. The UK is similar to Canada and Australia in allowing such decisions to be taken by chief police officers, but if you look at a country like Belgium, decisions about who is included are taken by a witness protection board comprising public prosecutors, the police, and members of the Justice and Interior ministries. If you look at Italy, there’s a central commission chaired by the Undersecretary of State, comprising judges and experts on organized crime.

(51) Yvon Dandurand, *Evidence*, 4 February 2008.

(52) Raf Souccar, Assistant Commissioner, Federal and International Operations, RCMP, *Evidence*, 19 April 2007.

(53) Director, Scottish Institute for Policing and Research, and Professor of Human Geography, *Evidence*, 31 May 2007.

In the opinion of the experts who appeared before us, the police are not necessarily best placed to decide on the admission of witnesses to witness protection programs. Professor Fyfe commented:

> [F]rom the work we did in looking across Europe, there was some surprise that in some jurisdictions it was the police who were allowed to take this decision. It was felt that [the police] were perhaps too close to the whole investigation process and that you needed some people who had some distance from that, who perhaps could take a wider view as to whether the witness was essential to the prosecution and the investigation. I think there was a feeling in some cases that perhaps the police were too ready to take witnesses into protection programs, because it would allow the investigations to proceed more quickly. (54)

According to Professor Dandurand, the problem with making the police responsible for admission decisions is that "they offer protection selectively based on what is useful for the police in attempting to obtain a conviction or advance a prosecution. […] A person may well be] facing a serious threat but [be] of no real value as a witness to the police."(55) Professor Dandurand also told the Committee about the findings of a Council of Europe study on best practices in witness protection: the Council concluded that it was important to separate witness protection agencies from investigative and prosecutorial units, with respect to both personnel and organization, in order to ensure the objectivity of the protective measures and to protect witnesses' rights.(56)

In agreement with the experts from whom we heard, we think it essential to separate the organization responsible for the Witness Protection Program from the police, in order to create a clear distinction between prosecution and investigation on the one hand and a witness's participation in the Program on the other. Such independence also strikes us as crucial for making it plain that protection is not a reward for cooperating with the authorities. We recognize that some witnesses are rewarded for their cooperation with the justice system (whether financially, by sentence reductions as a result of plea bargaining, or by leniency at the time of sentencing).(57) But while such benefits happen once and conclude, protection must evolve over time according to the circumstances and witnesses' needs.(58)

Like the experts with whom we spoke, the Committee considers that the decision to admit a witness to the Program should be made by a multidisciplinary team within the Department of Justice, that could be made up of police officers, Crown attorneys, criminologists and/or psychologists. Such a team would be in a much better position to

(54) *Evidence*, 31 May 2007.

(55) Yvon Dandurand, *Evidence*, 4 February 2008.

(56) Ibid.

(57) Yvon Dandurand, speaking notes tabled to the Committee, 4 February 2008.

(58) Anne-Marie Boisvert, *La protection des collaborateurs de la justice : éléments de mise à jour de la politique québécoise*, June 2005 (available in French only).

strike a balance between the public interest (vis-à-vis the risk posed by a witness's participation in the Program) and the interests of the prosecution (from the police standpoint). As Professor Fyfe said:

> It may be that having that kind of group taking those decisions, one that is slightly removed from the police, may offer a more independent and perhaps more dispassionate view of whom it is appropriate to protect and who would be included and who should be excluded from these programs.(59)

In light of the above:

RECOMMENDATION 1:

The Committee recommends that the *Witness Protection Program Act* (WPPA) be amended to entrust the administration of the Witness Protection Program to an independent Office within the Department of Justice. A multidisciplinary team from the Office, which could consist of police officers, Crown attorneys and psychologists and/or criminologists with appropriate security clearance, should be responsible for making decisions about witness admission and for monitoring of protection agreements. Police forces should be responsible for threat assessments, determining the level of security and implementing the protective measures.

(b) Carry out psychological assessments of candidates aged 18 and over

At the present time, candidates for the federal Witness Protection Program are assessed by members of the RCMP trained in the witness protection field. The assessment looks at the factors set out in the WPPA, including the nature of the risk to the witness's safety; the potential danger to the community if the witness is admitted to the Program; the value of the information or evidence given by the witness; and the likelihood of the witness's being able to adjust to life in the Program. According to the information we were given, candidate assessments do not systematically include a psychological evaluation designed to determine their ability to adapt and their likelihood of reoffending.

(59) *Evidence*, 31 May 2007.

Gerald Shur[60] explained to the Committee that in the American program the decision to accept a witness is based on a wide range of information, including a psychological assessment of the witness and every member of his/her family over the age of 18, to determine "whether or not the witness is likely to commit a violent act, how well [the witness and his/her family] would fit within the program, whether they would be able to follow the rules given to them, what sort of employment they would need, and what their skills are."[61]

On the basis of the evidence we heard, the Committee considers it would be preferable for potential candidates, including family members, to systematically undergo a psychological assessment, given the nature of this program of last resort and the fact that most witnesses admitted to it have had ties to the criminal milieu before cooperating with the authorities. The WPPA provision enabling the Commissioner to provide up to 90 days of protection in an emergency to a potential protectee who has not yet signed an agreement would not, in our opinion, be sufficient to allow for this type of evaluation without compromising investigations and/or prosecutions. Therefore:

RECOMMENDATION 2:

The Committee recommends that the *Witness Protection Program Act* be amended so that a psychological assessment of candidates over the age of 18, including family members, be automatically carried out before any candidate is admitted to the Program, particularly when a change of identity is being considered as a protective measure.

(c) Promote fair and equitable negotiations

At present, a potential protectee who is negotiating with the RCMP for individual protection, and in some cases for the protection of his or her family, is not offered the services of a lawyer. Several witnesses deplored this state of affairs, arguing that the uneven balance of power between a potential witness and the police justifies the automatic presence of a lawyer when the contract is being negotiated. Barry Swadron, QC, founder and senior member of the law firm of Swadron Associates, told the Committee:

(60) Gerald Shur, Senior Associate Director (ret'd), Office of Enforcement Operations, Criminal Division, United States Department of Justice, *Evidence*, 31 May 2007.

(61) Ibid.

> Here you have the RCMP, or whatever organization, which has been doing this for years, and you have a vulnerable person who's never been involved, and you expect him or her to match them. They have it all over [him or her]. At least if that person had a lawyer who could say, "Watch what you're getting into [... ."[62]

In agreement with the experts who appeared before us, the Committee considers that the presence of a legal adviser at the stage of negotiating and signing a protection contract is a decisive factor in making the negotiations fair and equitable, by ensuring that the protectee understands the conditions and scope of the document he/she is preparing to sign. The signing of such a contract marks a huge change in the life of a witness and his or her family. Although we have recommended the creation of an independent Office to administer the Witness Protection Program, we nevertheless consider that the negotiating and signing of such an important contract requires the informed consent of the witnesses being protected. Therefore:

RECOMMENDATION 3:

The Committee recommends that the *Witness Protection Program Act* be amended so that potential candidates are automatically offered the aid of legal counsel with an appropriate security clearance during the negotiation of the candidate's admission to the Witness Protection Program and the signing of the protection contract. The fees of such counsel should be paid by the independent Office responsible for witness protection at the Department of Justice.

(d) Establish a dispute resolution process

We learned in the course of our review that protectees who are dissatisfied with the Program are advised to contact their designated coordinator[63] to discuss their complaints or express their disagreement with an RCMP decision. Throughout our review, witnesses criticized this arrangement, pointing out that it is not reasonable to expect a dissatisfied individual to complain to someone in the very organization that is responsible for his or her protection and monitoring.

(62) *Evidence*, 5 June 2007.

(63) The Witness Protection Program coordinators are members of the RCMP who have been given specialized training in the field of witness protection.

The Commission for Public Complaints against the RCMP is currently empowered to hear complaints about the Witness Protection Program. The Chair of the Commission, Paul E. Kennedy, nevertheless told the Committee that the *Royal Canadian Mounted Police Act*(64) limits the Commission's reviews, in particular by allowing the RCMP to refuse to disclose certain information. In Mr. Kennedy's opinion, this provision constitutes a major obstacle to this civilian oversight mechanism.

As we saw in the preceding chapter of this report, the Commission has received few complaints about the management of the Program since the WPPA was passed in 1996. Between 20 June 1996 and 30 May 2007, the Commission received 21 complaints about the Program and initiated five investigations. To explain these figures, Mr. Kennedy pointed out that the Commission is not well known to the public at large and probably not to protectees either.

Protectees who are dissatisfied with RCMP decisions can also appeal to the Federal Court for a review of the decisions. Despite this, some witnesses were of the opinion that protectees do not have access to a reasonable mechanism for appealing decisions made by the people administering the Program, or for making their complaints heard. Professor Dandurand argued that it is "time to address the need for an effective complaint and redress mechanism for witnesses at risk and for protected witnesses who are endangered or whose rights may be abused as a result of poor witness protection practices."(65) In light of the above:

RECOMMENDATION 4:

The Committee recommends that the *Witness Protection Program Act* be amended to make the Commission for Public Complaints Against the RCMP responsible for handling complaints from candidates for, and protectees of, the Witness Protection Program. The Commission should have access to all documents it considers necessary for carrying out its review effectively, with the exception of Cabinet confidences subject to the appropriate safeguards. The Committee considers that candidates and protectees should be systematically informed of this recourse during negotiations for their admission to the Program.

(64) S.C. 2003, c. 22.

(65) Speaking notes, 4 February 2008.

2. FACILITATING ACCESS TO THE WITNESS PROTECTION PROGRAM

(a) Resolve the funding issue

Although, in theory, the federal Witness Protection Program enables any law enforcement agency in Canada to relocate witnesses anywhere within Canada, the Committee was told that a number of police forces do not have the financial means to take advantage of the Program, because it operates on a cost-recovery basis. The costs incurred in protecting a witness who has collaborated with a law enforcement agency other than the RCMP are currently billed to that agency. When he appeared as a representative of the Canadian Association of Chiefs of Police, Gordon B. Schumacher made the following observation:

> When police agencies first look at the national program for help with witness relocation and witness protection, they find substantial difficulties that have to be overcome, not the least of which is cost. The cost of placing an individual in the national program can be substantial and can be beyond the means of most Canadian police agencies.
>
> […] I can't emphasize that point enough, as it's one of the main problems with the federal Act. It's simply unaffordable.(66)

The problem of access to the federal Witness Protection Program is not new. The Committee learned that the Canadian Association of Chiefs of Police and the Manitoba Association of Chiefs of Police recommended a national witness protection funding regime to the provincial and federal ministers of Justice in 2005.(67) During our review, the Canadian Association of Chiefs of Police reiterated the need for a federal funding program designed for all Canadian police forces that wish to relocate witnesses. The Association considers that the lack of such funding creates the risk that certain Canadian cities will become "safe havens for criminals". Association representative Gordon Schumacher said:

> Organized crime, serious crime, does not discriminate relative to geographic boundaries. It can be found in every province, city and town throughout Canada. Failure to attack these groups in small communities creates safe havens; therefore, programs such as witness protection must be made available if we are to stay one step ahead of criminal organizations and those who commit serious crimes against the people of Canada.(68)

The Committee believes it is essential to resolve the issue of funding, in order to make sure that the Witness Protection Program is a truly national program and accessible to all Canadians whose safety is at serious risk because of their cooperation, or that of a member of their family, with the authorities. Therefore:

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(66) Gordon B. Schumacher, *Evidence*, 8 May 2007.

(67) Ibid

(68) Ibid.

RECOMMENDATION 5:

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety develop a funding agreement for participation in the Witness Protection Program that would recognize governments' shared responsibility for justice. The agreement should be designed to make the Witness Protection Program accessible to all Canadian police forces.

(b) Encourage collaboration among all agencies involved in witness protection

In agreement with our witnesses, the Committee considers that simply making more money available will not be enough to guarantee access to the Program. Governments' commitment to the protection of vulnerable and threatened witnesses must also involve the mobilization of all agencies involved in witness protection. To achieve this, the Committee considers it important to encourage the drafting of memoranda of understanding between the various parties involved in witness protection. Such memoranda could be drawn up between the Correctional Service of Canada, the provincial/territorial correctional services and the RCMP, or with provincial and territorial governments, in order to facilitate the assumption of responsibility for vulnerable and threatened witnesses and respect for their rights. Collaboration of this kind is indispensable for making a success of most of the protection agreements, because some protected witnesses must serve a term of imprisonment in the provincial or federal correctional system, a large number are relocated to another province or territory, and a change of identity is often required.

During our review, some police representatives suggested amending the WPPA to allow the organization responsible for administering the federal Witness Protection Program to reach memoranda of understanding with the provincial governments on funding for witnesses. At the present time, police forces that do not have the means to pay protection expenses from their regular budgets must arrange funding for their witness from their provincial justice ministry before applying for admission to the federal Program.[69] Allowing ministries of justice to enter into agreements directly with the Office responsible for witness protection, or with the federal government, would have the advantage of accelerating the processing of protection files and making the process less cumbersome. In light of the testimony received:

(69) Ibid.

RECOMMENDATION 6:

The Committee recommends that the *Witness Protection Program Act* be amended so that the RCMP or the independent Department of Justice Office responsible for witness protection can enter into agreements directly with provincial and territorial governments, in order to accelerate the processing of witness protection files. Until such time as memoranda of agreement are drafted, the RCMP should continue to enter into agreements with police forces.

3. ESTABLISHING MINIMUM CANADIAN WITNESS PROTECTION STANDARDS

As we saw in the second chapter of this report, some Canadian provinces and municipalities have their own witness protection programs. Although the Committee did not study the operation of these programs in depth, the evidence we heard indicates that there is substantial variation in their operations and administration. The federal Witness Protection Program is currently the only one governed by statute, a situation that some witnesses found deplorable. Barry Swadron argued that:

> Apart from the *Witness Protection Program Act* of Parliament, there is no other legislation anywhere in Canada. I'm of the view that where there is no legislation, there are no minimum standards. I'm sure there are standards, but these standards might be substandard. Moreover, they could be changed at will.(70)

Mr. Swadron urged the Committee to recommend that Parliament set minimum standards for the administration of all witness protection programs in the country, pointing out that "[t]here's no reason that Parliament cannot legislate across the board. It legislates the *Criminal Code*, and the *Criminal Code* is dealt with by the provinces and municipal police forces."(71)

The RCMP representatives who appeared before the Committee also said they were concerned about the lack of minimum standards. In June 2007, the protection and monitoring of 300 protectees in the federal Program was done entirely by either provincial or municipal police forces,(72) depending on the case. Chief Superintendent Ogden explained why:

(70) *Evidence*, 5 June 2007.

(71) Ibid.

(72) *Evidence*, 19 April 2007.

> Any time another agency approaches us and they request secure documents only, but they say, "No, we want to do the... we'll look after the person, we'll look after all the obligations in the supervision." They are technically in the Witness Protection Program. They are provided secure documents. That would be all of our involvement. From there, we're dependent on the other police agency to advise us if there have been breaches and what the action follow-up has been.(73)

The most disturbing aspect is that the RCMP does not seem able to ensure uniform treatment for all protectees in the Program. Indeed, it is highly probable that not all protectees supervised by other police forces are handled in the same way, with their treatment depending on the police force that provides their protection. Chief Superintendent Ogden said that in certain cases the RCMP is not even told when another police force decides to terminate the protection of a protectee, or why. In such cases the RCMP is unable to ensure that the protection has ended in a manner consistent with the standards it has established.(74)

To rectify this shortcoming, RCMP Assistant Commissioner Raf Souccar recommended setting up a single witness protection program. The model he proposed would entail the creation of integrated units made up of representatives of various law enforcement agencies from across the country, mandated to provide protection and monitoring for all protectees. Supervision of the integrated units and administration of the program would be done by the Commissioner of the RCMP, as under the existing Program. The suggested program would, in the Assistant Commissioner's opinion, make it possible to treat witness protection cases consistently all across Canada, by providing standardized training for police officers working with agent sources and informer sources.

We agree with the witnesses that minimum standards for the Witness Protection Program must be introduced as soon as possible. Police forces must respect the provisions of the protection contract when they admit witnesses to the federal program. We further consider that all witness protection programs should respect the same minimum protection standards. Therefore:

RECOMMENDATION 7:

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety elaborate minimum Canadian standards to ensure uniformity in the treatment of all witnesses admitted to witness protection programs. This would include, wherever possible, an expansion of the options available as set out in section 486 of the *Criminal Code* and any provincial, territorial or municipal equivalents, in order to facilitate testimony by

(73) Ibid.

(74) *Evidence*, 7 June 2007.

witnesses to crimes who do not wish to enter a formal witness protection program.

The Committee considers that the provinces and territories that wish to establish their own witness protection programs should be encouraged to do so. The Committee sees no reason why the provinces and territories should not take charge of the relocation and change in identity of their own witnesses, as long as the minimum rules are complied with.

4. PROMOTING TRANSPARENCY

Witness protection requires respect for confidentiality. The Committee realizes that publication of detailed data could compromise the safety of protectees and the integrity of the Witness Protection Program. However, it seems to us that the Program could be made more transparent by allowing independent research that respects case confidentiality, by improving the information in the annual reports, and by ensuring independent oversight of the RCMP's activities.

(a) Allow independent research

Independent research is difficult, given the nature of the Program, but it is not impossible. Nick Fyfe presented an example of research carried out in the United Kingdom that dealt with the experiences of protectees. When Yvon Dandurand appeared, he also discussed this possibility:

> [U]sually this is done either by vetting a researcher or research team through a very stringent process to make sure you're not exposing witnesses, and that's complicated, but possible. It has been done. The second [way] is to […] ask your questions of the witnesses through their handlers or through the people responsible for their protection.(75)

Professor Dandurand also discussed the recent work of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 in relation to witness protection. Subsection b.v. of the Commission's Terms of Reference calls for the Commissioner to analyze "whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases." Professor Dandurand noted that the Commission had distributed a questionnaire to some of its witnesses who were protected under the RCMP Witness Protection Program, to find out about their views. The Committee applauds the Commission's initiative and looks forward to its findings.

(75) *Evidence*, 4 February 2008.

In common with the witnesses who appeared before it, the Committee considers that independent research is a key element for ensuring the Program's smooth operation and credibility.

RECOMMENDATION 8:

The Committee recommends that the independent Department of Justice witness protection Office (once it has been established) encourage and permit independent research into witness protection (for example, assessments of the Program's effectiveness and efficiency based on analysis of prosecutions; analyses of protectee feedback, involvement in crime and success at relocating). The Office should also systematically compile data about the Witness Protection Program, while respecting the confidentiality of protectees.

(b) Improve the information found in the annual reports tabled to Parliament

During our review, some witnesses criticized the poor quality of the data presented in the Witness Protection Program's annual reports. Some said that the data did not make it possible to evaluate the Program's costs overall. The amount cited in the annual reports does not include the salaries of RCMP officers, the cost of investigations or the subsequent legal fees. One witness also noted that the reports contain no data making it possible to determine where the money is spent and, consequently, evaluate results per dollar spent. It is impossible to find out, for example, what percentage of funding goes to compensation as opposed to relocation, physical protection of witnesses, psychological monitoring, and so forth. Aware of this shortcoming, the RCMP told the Committee that it intends to present more detailed data on the Program's costs in its 2006-2007 annual report.

Some witnesses pointed out that the general public's ideas about the Program are sometimes erroneous. During the review, the Committee learned about one of these misconceptions, which is that people in the Program are offered immunity for any criminal acts they may commit in the future. Assistant Commissioner Souccar said of this idea that:

> This perception that there is a bubble within which a person in the Witness Protection Program lives is completely false. They're not in any kind of bubble that allows them immunity from committing crimes. They are subject to all the laws of the country, as anybody else is. Their criminal record follows them. If they commit a crime, they will leave evidence behind. Their fingerprints don't change. Their DNA doesn't change. They will be investigated, and they will be prosecuted. They will go to jail, just like anybody else. The fact that they're in the Program does not allow them to hide. That's the perception that seems to be out there.(76)

(76) Raf Souccar, *Evidence*, 19 April 2007.

In light of the above:

RECOMMENDATION 9:

The Committee recommends that the information contained in the annual report on the Witness Protection Program be enhanced so as to give a clearer picture of the Program, the reason for its existence and protectees' obligations.

(c) Provide for civilian oversight of RCMP activities

In recent years, the RCMP has been the subject of many reviews. In December 2007, the report of the Task Force on Governance and Cultural Change in the RCMP recommended the creation of an independent complaints and oversight commission. Witnesses who appeared before us supported the need for civilian oversight of the RCMP's activities. Paul E. Kennedy, Chair of the Commission for Public Complaints Against the RCMP, described to the Committee the legislative amendments that would make it possible to give this role to his Commission.

While the Committee realizes that these are important issues, we consider that they lie outside the scope of our mandate. In addition, proposed recommendations are already in the hands of the government.

CONCLUSION

Relocating witnesses and creating new identities for them are extreme, complex and onerous protective measures. Admission to the federal Witness Protection Program must thus remain a protective measure of last resort. The WPPA provides that alternative measures for protecting witnesses must be considered before they are admitted to the Program: we find this entirely appropriate. At the same time, we want to reiterate that all witness protective measures, whether at the municipal, provincial, territorial or federal levels, play an essential role in the fight against crime and the maintenance of the rule of law. The Committee has every hope that the implementation of this report's recommendations will make it possible to correct a number of the weaknesses in the federal Witness Protection Program that were brought to our attention.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1:

The Committee recommends that the *Witness Protection Program Act* (WPPA) be amended to entrust the administration of the Witness Protection Program to an independent Office within the Department of Justice. A multidisciplinary team from the Office, which could consist of police officers, Crown attorneys and psychologists and/or criminologists with appropriate security clearance, should be responsible for making decisions about witness admission and for monitoring of protection agreements. Police forces should be responsible for threat assessments, determining the level of security and implementing the protective measures.

RECOMMENDATION 2:

The Committee recommends that the *Witness Protection Program Act* be amended so that a psychological assessment of candidates over the age of 18, including family members, be automatically carried out before any candidate is admitted to the Program, particularly when a change of identity is being considered as a protective measure.

RECOMMENDATION 3:

The Committee recommends that the *Witness Protection Program Act* be amended so that potential candidates are automatically offered the aid of legal counsel with an appropriate security clearance during the negotiation of the candidate's admission to the Witness Protection Program and the signing of the protection contract. The fees of such counsel should be paid by the independent Office responsible for witness protection at the Department of Justice.

RECOMMENDATION 4:

The Committee recommends that the *Witness Protection Program Act* be amended to make the Commission for Public Complaints Against the RCMP responsible for handling complaints from candidates for, and protectees of, the Witness Protection Program. The Commission should have access to all documents it considers necessary for carrying out its review effectively, with the exception of Cabinet confidences subject to the appropriate safeguards. The Committee considers that candidates and protectees should be systematically informed of this recourse during negotiations for their admission to the Program.

RECOMMENDATION 5:

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety develop a funding agreement for participation in the Witness Protection Program that would recognize governments' shared responsibility for justice. The agreement should be designed to make the Witness Protection Program accessible to all Canadian police forces.

RECOMMENDATION 6:

The Committee recommends that the *Witness Protection Program Act* be amended so that the RCMP or the independent Department of Justice Office responsible for witness protection can enter into agreements directly with provincial and territorial governments, in order to accelerate the processing of witness protection files. Until such time as memoranda of agreement are drafted, the RCMP should continue to enter into agreements with police forces.

RECOMMENDATION 7:

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety elaborate minimum Canadian standards to ensure uniformity in the treatment of all witnesses admitted to witness protection programs. This would include, wherever possible, an expansion of the options available as set out in section 486 of the *Criminal Code* and any

provincial, territorial or municipal equivalents, in order to facilitate testimony by witnesses to crimes who do not wish to enter a formal witness protection program.

RECOMMENDATION 8:

The Committee recommends that the independent Department of Justice witness protection Office (once it has been established) encourage and permit independent research into witness protection (for example, assessments of the Program's effectiveness and efficiency based on analysis of prosecutions; analyses of protectee feedback, involvement in crime and success at relocating). The Office should also systematically compile data about the Witness Protection Program, while respecting the confidentiality of protectees.

RECOMMENDATION 9:

The Committee recommends that the information contained in the annual report on the Witness Protection Program be enhanced so as to give a clearer picture of the Program, the reason for its existence and protectees' obligations.

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Thirty-Ninth Parliament, 1st Session		
Department of Justice William Bartlett, Senior Counsel Criminal Law Policy Section	2007/04/19	38
Royal Canadian Mounted Police David Bird, Counsel Legal Services Derek R. Ogden, Chief Superintendent Director General, Drugs and Organized Crime, Federal and International Operations Raf Souccar, Assistant Commissioner Federal and International Operations		
Canadian Association of Chiefs of Police Mike McDonell, Assistant Commissioner Chair of the Counter-terrorism and National Security Committee Steve Izzett, Staff Inspector Toronto Police Service Board Gordon B. Schumacher, Superintendent Winnipeg Police Service	2007/05/08	43
Commission for Public Complaints Against the Royal Canadian Mounted Police Paul E. Kennedy, Chair Brooke McNabb, Vice-Chair	2007/05/29	46
As an individual Gerald Shur, Senior Associate Director (Retired) Office of Enforcement Operations, Criminal Division United States Department of Justice	2007/05/31	47
University of Dundee Nick Fyfe, Director Scottish Institute for Policing and Research and Professor of Human Geography		

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
As an individual Tom Bulmer, Barrister and Solicitor	2007/06/05	48
Swadron Associates Barry Swadron, Senior Member		
Department of Justice Erin McKey, Senior Counsel Criminal Law Policy Section	2007/06/07	49
Royal Canadian Mounted Police David Bird, Counsel Legal Services Carl Busson, Superintendent Officer in charge, Drugs and Organized Crime, ''E'' Division, BC Derek R. Ogden, Chief Superintendent and Director General Drugs and Organized Crime, Federal and International Operations		
Thirty-Ninth Parliament, 2nd Session		
University College of the Fraser Valley Yvon Dandurand, Associate Vice-President of Research and Graduate Studies Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy	2008/02/04	14

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

Thirty-Ninth Parliament, 1st Session

Fyfe, Nick

Thirty-Ninth Parliament, 2nd Session

Dandurand, Yvon

APPENDIX C:
WITNESS PROTECTION PROGRAM ACT

Witness Protection Program Act

1996, c. 15

W-11.2

[Assented to June 20th, 1996]

An Act to provide for the establishment and operation of a program to enable certain persons to receive protection in relation to certain inquiries, investigations or prosecutions

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Witness Protection Program Act*.

INTERPRETATION

Definitions

2. In this Act,

"Commissioner"
«*commissaire* »

"Commissioner" means the Commissioner of the Force;

"Force"
«*Gendarmerie* »

"Force" means the Royal Canadian Mounted Police;

"Minister"
«*ministre* »

"Minister" means the Minister of Public Safety and Emergency Preparedness;

"Program"
«*programme* »

"Program" means the Witness Protection Program established by section 4;

"protectee"
«*bénéficiaire* »

"protectee" means a person who is receiving protection under the Program;

"protection"
«*protection* »

"protection" , in respect of a protectee, may include relocation, accommodation and change of identity as well as counselling and financial support for those or any other purposes in order to ensure the security of the protectee or to facilitate the protectee's re-establishment or becoming self-sufficient;

"protection agreement"
«*accord de protection* »

"protection agreement" means an agreement referred to in paragraph 6(1)(*c*) that applies in respect of a protectee;

"witness"
«*témoin* »

"witness" means

(*a*) a person who has given or has agreed to give information or evidence, or participates or has agreed to participate in a matter, relating to an inquiry or the investigation or prosecution of an offence and who may require protection because of risk to the security of the person arising in relation to the inquiry, investigation or prosecution, or

(*b*) a person who, because of their relationship to or association with a person referred to in paragraph (*a*), may also require protection for the reasons referred to in that paragraph.

1996, c. 15, s. 2; 2005, c. 10, s. 34.

PURPOSE OF ACT

Protection of persons involved in law enforcement matters

3. The purpose of this Act is to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance in law enforcement matters in relation to

(*a*) activities conducted by the Force, other than activities arising pursuant to an arrangement entered into under section 20 of the *Royal Canadian Mounted Police Act*; or

(*b*) activities conducted by any law enforcement agency or international criminal court or tribunal in respect of which an agreement or arrangement has been entered into under section 14.

1996, c. 15, s. 3; 2000, c. 24, s. 71.

WITNESS PROTECTION PROGRAM

Establishment

4. A program to facilitate the protection of witnesses is hereby established called the Witness Protection Program to be administered by the Commissioner.

Admission to Program

5. Subject to this Act, the Commissioner may determine whether a witness should be admitted to the Program and the type of protection to be provided to any protectee in the Program.

Admission to Program

6. (1) A witness shall not be admitted to the Program unless

(*a*) a recommendation for the admission has been made by a law enforcement agency or an international criminal court or tribunal;

(*b*) the Commissioner has been provided by the witness with such information, in accordance with any regulations made for the purpose, concerning the personal history of the witness as will enable the Commissioner to consider the factors referred to in section 7 in respect of the witness; and

(*c*) an agreement has been entered into by or on behalf of the witness with the Commissioner setting out the obligations of both parties.

Emergency situations

(2) Notwithstanding subsection (1), the Commissioner may, in a case of emergency, and for not more than ninety days, provide protection to a person who has not entered into a protection agreement.

1996, c. 15, s. 6; 2000, c. 24, s. 72.

Consideration of factors

7. The following factors shall be considered in determining whether a witness should be admitted to the Program:

(*a*) the nature of the risk to the security of the witness;

(*b*) the danger to the community if the witness is admitted to the Program;

(*c*) the nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter;

(*d*) the value of the information or evidence given or agreed to be given or of the participation by the witness;

(*e*) the likelihood of the witness being able to adjust to the Program, having regard to the witness's maturity, judgment and other personal characteristics and the family relationships of the witness;

(*f*) the cost of maintaining the witness in the Program;

(*g*) alternate methods of protecting the witness without admitting the witness to the Program; and

(*h*) such other factors as the Commissioner deems relevant.

Deemed terms of protection agreement

8. A protection agreement is deemed to include an obligation

(*a*) on the part of the Commissioner, to take such reasonable steps as are necessary to provide the protection referred to in the agreement to the protectee; and

(*b*) on the part of the protectee,

(i) to give the information or evidence or participate as required in relation to the inquiry, investigation or prosecution to which the protection provided under the agreement relates,

(ii) to meet all financial obligations incurred by the protectee at law that are not by the terms of the agreement payable by the Commissioner,

(iii) to meet all legal obligations incurred by the protectee, including any obligations regarding the custody and maintenance of children,

(iv) to refrain from activities that constitute an offence against an Act of Parliament or that might compromise the security of the protectee, another protectee or the Program, and

(v) to accept and give effect to reasonable requests and directions made by the Commissioner in relation to the protection provided to the protectee and the obligations of the protectee.

Termination of protection

9. (1) The Commissioner may terminate the protection provided to a protectee if the Commissioner has evidence that there has been

(*a*) a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the Program; or

(*b*) a deliberate and material contravention of the obligations of the protectee under the protection agreement.

Notification of proposed termination

(2) The Commissioner shall, before terminating the protection provided to a protectee, take reasonable steps to notify the protectee and allow the protectee to make representations concerning the matter.

Reasons for certain decisions

10. Where a decision is taken

(*a*) to refuse to admit a witness to the Program, the Commissioner shall provide the law enforcement agency or international criminal court or tribunal that recommended the admission or, in the case of a witness recommended by the Force, the witness, with written reasons to enable the agency, court, tribunal or witness to understand the basis for the decision; or

(*b*) to terminate protection without the consent of a protectee, the Commissioner shall provide the protectee with written reasons to enable the protectee to understand the basis for the decision.

1996, c. 15, s. 10; 2000, c. 24, s. 73.

PROTECTION OF IDENTITY

Disclosures prohibited

11. (1) Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.

Application

(2) Subsection (1) does not apply

(*a*) to a protectee or former protectee who discloses information about the protectee or former protectee if the disclosure does not endanger the safety of another protectee or former protectee and does not compromise the integrity of the Program; or

(*b*) to a person who discloses information that was disclosed to the person by a protectee or former protectee if the disclosure does not endanger the safety of the protectee or former protectee or another protectee or former protectee and does not compromise the integrity of the Program.

Exception

(3) Information about the location or a change of identity of a protectee or former protectee may be disclosed by the Commissioner

(*a*) with the consent of the protectee or former protectee;

(*b*) if the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure;

(*c*) if the disclosure is essential in the public interest for purposes such as

(i) the investigation of a serious offence where there is reason to believe that the protectee or former protectee can provide material information or evidence in relation to, or has been involved in the commission of, the offence,

(ii) the prevention of the commission of a serious offence, or

(iii) national security or national defence; or

(*d*) in criminal proceedings where the disclosure is essential to establish the innocence of a person.

Further disclosures prohibited

(4) A disclosure of information made to a person under this section does not authorize the person to disclose the information to anyone else.

Notification of proposed disclosure

(5) The Commissioner shall, before disclosing information about a person in the circumstances referred to in paragraph (3)(*b*), (*c*) or (*d*), take reasonable steps to notify the person and allow the person to make representations concerning the matter.

Exception

(6) Subsection (5) does not apply if, in the opinion of the Commissioner, the result of notifying the person would impede the investigation of an offence.

Factors to be considered

12. The following factors shall be considered in determining whether information about a person should be disclosed under section 11:

(*a*) the reasons for the disclosure;

(*b*) the danger or adverse consequences of the disclosure in relation to the person and the integrity of the Program;

(*c*) the likelihood that the information will be used solely for the purpose for which the disclosure is made;

(*d*) whether the need for the disclosure can be effectively met by another means; and

(*e*) whether there are effective means available to prevent further disclosure of the information.

Use of new identity

13. A person whose identity has been changed as a consequence of the protection provided under the Program shall not be liable or otherwise punished for making a claim that the new identity is and has been the person's only identity.

AGREEMENTS AND ARRANGEMENTS WITH OTHER JURISDICTIONS

Commissioner's agreements

14. (1) The Commissioner may enter into an agreement

(*a*) with a law enforcement agency to enable a witness who is involved in activities of the law enforcement agency to be admitted to the Program;

(*b*) with the Attorney General of a province in respect of which an arrangement has been entered into under section 20 of the *Royal Canadian Mounted Police Act* to enable a witness who is involved in activities of the Force in that province to be admitted to the Program; and

(*c*) with any provincial authority in order to obtain documents and other information that may be required for the protection of a protectee.

Ministerial arrangements

(2) The Minister may enter into a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the Program, but no such person may be admitted to Canada pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration nor admitted to the Program without the consent of the Minister.

Arrangements

(3) The Minister may enter into an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the Program, but no such person may be admitted to Canada pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration, nor admitted to the Program without the consent of the Minister.

1996, c. 15, s. 14; 2000, c. 24, s. 74.

GENERAL

Commissioner's powers

15. The Commissioner's powers under this Act, other than those that may be exercised in the circumstances referred to in paragraphs 11(3)(*b*) to (*d*), may be exercised on behalf of the Commissioner by any member of the Force authorized to do so but, where a decision is to be taken

(*a*) whether to admit a witness to the Program in circumstances other than those described in paragraph (*b*), the member making the decision shall be an officer of the Force who holds a rank no lower than Chief Superintendent; and

(*b*) whether to admit a witness to the Program pursuant to an agreement under paragraph 14(1)(*a*) or an arrangement under subsection 14(2) or (3) or to change the identity of a protectee or terminate the protection provided to a protectee, the member making the decision shall be the Assistant Commissioner who is designated by the Commissioner as being responsible for the Program.

1996, c. 15, s. 15; 2000, c. 24, s. 75(E).

Annual report

16. (1) The Commissioner shall, not later than June 30 each year, submit a report on the operation of the Program during the preceding fiscal year to the Minister.

Tabling

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

Policy directions relating to Program

17. The Commissioner shall give effect to such directions as the Minister may make concerning matters of general policy related to the administration of the Program.

Cooperation of other branches of government

18. Subject to confidentiality requirements imposed by any other Act, departments and agencies of the Government of Canada shall, to the extent possible, cooperate with the Commissioner and persons acting on behalf of the Commissioner in the administration of the Program under this Act.

Existing agreements

19. Every agreement in existence on the day on which this Act comes into force entered into by or on behalf of the Commissioner to provide protection to a person or entered into on behalf of the Government of Canada relating to the protection of persons is, to the extent that it is consistent with this Act, deemed to have been entered into under the relevant provisions of this Act and shall be governed by this Act.

Regulations

20. The Governor in Council may make regulations for the purpose of giving effect to this Act including, without limiting the generality of the foregoing, regulations

(*a*) specifying the types of information to be provided in respect of a witness who is being considered for admission to the Program;

(*b*) respecting the terms that must be included in protection agreements or in agreements or arrangements entered into under section 14; and

(*c*) governing the procedures to be followed in order to involve a protectee in legal proceedings.

OFFENCE

Disclosure offence

21. Every person who contravenes subsection 11(1) is guilty of an offence and liable

(*a*) on conviction on indictment, to a fine not exceeding $50,000 or to imprisonment for a term not exceeding five years, or to both; or

(*b*) on summary conviction, to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

RELATED AND CONSEQUENTIAL AMENDMENTS

22. and 23. [Amendments] Important Notices

APPENDIX D:
ONTARIO WITNESS PROTECTION PROGRAM

Ontario Ministry of the Attorney General
Criminal Law Division

720 Bay Street
Toronto. Ontario M5G 2K1
Phone: (416)326-2615
Fax: (416)326-2063

720 rue Bay
Toronto. Ontario M5G 2K1
Tele: (416)326-2615
Telec: (416}326-2063

PRACTICE MEMORANDUM To
Counsel, Criminal Law Division

Date: January 8, 2007

Subject: Ontario's Witness Protection Program

Synopsis: This practice memorandum sets out the procedure for Crown Counsel to follow when dealing with a witness who may require the temporary assistance of Ontario's Witness Protection Program. It also provides information about the program, the criteria for acceptance, and the administration of protective funding.

Table of Contents

Opinion/Advice:

All applications for admission to Ontario's Witness Protection Program must be made to the Ministry of the Attorney General, Crown Law Office - Criminal at 720 Bay Street, 10th Floor, Toronto, Ontario, M5G 2K1 (416-326-4600). Applications must be reviewed by a designated counsel in the Crown Law Office - Criminal, the Director of that Office and the Assistant Deputy Attorney General- Criminal Law, and must be approved by the Deputy Attorney General ***before*** any promises of acceptance into the program or of ongoing financial or protective assistance are made to the witness.

1. Criteria For Acceptance

The Witness Protection Program provides time-limited funding to assist in the protection, maintenance and relocation of a witness and/or family members where doing so is in the best interests of the administration of justice. Such an unusual measure may be appropriate where:

a. the life or health of the witness and/or family members is judged by the police to be in *real* danger as a result of the involvement of the witness in a prosecution;

b. the case in which the witness is involved is a case of significance to the administration of justice; *e.g. murder, robbery, serious crimes of violence, organized crime;*

c. the witness is cooperating with the police and has agreed to provide truthful testimony that is a *key* element of the Crown's case; and

d. the witness's and/or his family members' circumstances (e.g. not incarcerated, no longer an undercover agent, etc.) and behaviour (e.g. ability and willingness to comply with program discipline) are such that the witness and/or family members are capable of benefiting from the program's protective measures without themselves posing a danger to the public while in the program.

2. What The Program Provides

The witness protection program does *not* provide long-term financial assistance. It is a temporary relocation and assistance program only. The program also ***does not*** provide rewards or benefits in return for testimony. In addition to security advice, the program ***may***, depending on the circumstances of the witness and/or family members, provide such things as:

a. funding to cover the costs of relocation to a safe environment;

b. funding for temporary rent, utilities, food and maintenance;

c. assistance in obtaining social assistance benefits under the new name and in the new locale;

d. funding to cover the costs of specifically approved security measures;

e. where appropriate, funding to cover exceptional medical expenses including, where appropriate, psychological counselling;

f. where appropriate, assistance in changing names and obtaining new identification documents; and

g. where appropriate, funding for time-limited and specifically approved upgrades to employment skills or education.

Note: the Witness Protection Program ***does not*** pay for police costs such as overtime and ordinary travel expenses. Nor does it pay the travel and accommodation costs of a protected witness required to return to court to testify, which costs are the responsibility of the local Crown's office. Where claims for travel expenses for witness are submitted by an authorized witness protection officer, the local Crown's office should, for security reasons, not insist on the submission of travel or

accommodation receipts or other routine expense documentation. In such cases, the police will retain such documentation in their own files.

3. **Procedure For Making An Application**

An application for assistance under the Witness Protection Program should ***not*** be sponsored and approved by the Crown Attorney or Assistant Crown Attorney who will be prosecuting the case in which the witness is expected to testify. The bulk of the paperwork associated with an application will be done by the assigned witness protection officer with the assistance of the investigators. On request of the witness protection officer, prosecuting counsel should arrange for a senior, independent Crown counsel to sponsor and approve the application on behalf of the local Crown Attorney's office. The roles of the prosecuting Crown counsel and the senior independent Crown counsel are distinct from one another.

The prosecuting Crown counsel should:

a. Upon becoming aware that an application to the Witness Protection Program may be necessary, instruct the investigating officers to clearly advise the witness that:

- The investigating officers have no authority to deal with witness protection matters and cannot make any promises or guarantees of acceptance into the program;

- The Crown Attorney or Assistant Crown Attorney who prosecutes the case in which the witness is to testify likewise will not be involved in witness protection matters and will not discuss such issues with the witness except to the extent that such later becomes necessary in order to prepare the witness to testify;

- Any decisions about the witness's acceptance into the Witness Protection Program and about the level or type of assistance the witness may be offered will be made by the Ministry of the Attorney General and not by the local police or prosecutors; and

- Assuming this has not already happened, the witness will, at the appropriate time, be interviewed in depth by a witness protection officer.

b. Sign the application provided by the witness protection officer confirming that the witness is willing and able to testify and that his or her anticipated testimony is a key element of the Crown's case. Ideally, this should only be done after the witness has given a sworn, videotaped statement to the police;

c. Be aware that the witness protection officer will liaise with the investigating officer(s) to ensure that the witness is made available for court appearances and for any witness preparation interviews required by the prosecuting counsel. The responsibility for funding the witness's travel and maintenance for court

appearances and preparation interviews rests with the local Crown's office just as it would with any other out-of-town witness;

d. Obtain the disclosure material provided to the investigators by the witness protection officer and provide that disclosure to the defence. Standard witness protection practice requires the witness protection officer to provide the investigators with appropriate disclosure materials (edited for security reasons where necessary) relating to the witness's participation in the Witness Protection Program; [1]

e. The prosecuting Crown counsel must ensure that the investigators support the witness protection officers' efforts to manage the witness's protection and restrict their own dealings with the witness accordingly;

f. The prosecuting Crown counsel must consult with the reviewing counsel at the Crown Law Office - Criminal if any additional or other issues relating to the witness's participation in the program arise during the course of the prosecution;

g. On becoming aware that a prosecution witness is, has been or may become involved in any other witness protection program or similar process, immediately contact and consult with a reviewing counsel in the Crown Law Office - Criminal to ensure that the witness's treatment by that other program or process is compatible with the Ministry's own witness protection practices; and

h. On request or as needed, keep the witness protection officer and reviewing counsel at the Crown Law Office - Criminal apprised of the status of the prosecution and of any developments which might have an impact on the witness or his safety.

The senior independent Crown counsel should:

a. Meet with the investigators and become familiar with the details of the case and the role of the witness in the prosecution;

b. When the witness has a lawyer, make it clear to that lawyer that any decision about the witness's acceptance into the Witness Protection Program, or about the level or type of assistance offered, will be made independently by the Ministry of the Attorney General based on the witness's security needs and is ***not*** a matter that can form part of any locally made plea or other arrangements involving the witness;

[1] Witness protection officers are trained not to discuss the case with protected witnesses and to instruct witnesses that they must abide by the same restriction. Accordingly, it will only be rarely that a witness protection officer is in possession of original information relevant to a prosecution. In those rare cases where the witness protection officer is, disclosure of any required information will be made to the investigators in edited form if necessary.

c. Ensure that the witness protection officers have all the information (e.g. synopsis of case, witness statements or videotapes, details of outstanding charges and any anticipated resolution) needed to complete the witness's application for admission to the Witness Protection Program;

d. Instruct the investigating officers to cooperate with the witness protection officers and, in particular, to produce any threat assessment or other information the witness protection officers require;

e. Consult with the reviewing counsel in the Crown Law Office - Criminal about any issues of concern that arise from a review of the application;

f. Sign the completed application on behalf of the local Crown Attorney's Office.
By signing the application, the senior independent Crown indicates that he or she has independently assessed the proposed use of witness protection in respect of the witness and is of the opinion that, in all the circumstances (which circumstances include any plea arrangements or other advantages or benefits which have flowed or might flow either to the protected witness or to other witnesses in the case), said use is not contrary to the best interests of the administration of justice;

g. The senior independent Crown counsel must ensure that the investigators support the witness protection officers' efforts to manage the witness's protection and restrict their own dealings with the witness accordingly; and

h. Advise both the Crown Attorney *and* the Regional Director of Crown Operations of the application and keep them and reviewing counsel in the Crown Law Office - Criminal apprised of any developments capable of affecting the assessment made under step 6.

4. Administration Of Protective Funding

Once the application has been approved by the Ministry of the Attorney General and the witness has been accepted in the program, the following will typically occur:

a. A standard Letter of Acknowledgement (describing the general nature of the financial and other assistance approved for the witness) will be drawn up by reviewing counsel in the Crown Law Office - Criminal and signed by the witness *before* any funds (interim protection assistance funds excepted) are disbursed by the police;

b. The original of the Letter of Acknowledgement will be retained by the witness protection officer assigned to the case and will be made available to the prosecuting counsel in the event that it is required as an exhibit;

c. Prosecuting counsel will be advised by letter from the Crown Law Office Criminal that the witness has been accepted into the program. The investigating

officers will (on an ongoing basis if necessary) be provided by the witness protection officers with such details of the financial assistance given the witness and other relevant matters as are necessary to make the required disclosure to the defence;

d. A cheque from the Ministry of the Attorney General, made payable to the designated witness protection officer, will be issued once the applicant has been approved. The witness protection officer will deposit the funds in a separate, interest-bearing account from which all witness protection payments as provided for in the Letter of Acknowledgement will be made; and

e. The witness protection officer will provide an accounting of the funds to the Crown Law Office - Criminal as requested and will prepare and provide a final accounting at the end of the witness protection project.

5. Interim Protective Assistance

It is often the case in an investigation that the need for witness protection arises with little or no warning such that a witness is in need of immediate protection. In such emergency situations, police forces have funds available to carry out their responsibilities to the witness under the *Police Services Act.* Ontario's Witness Protection Program, upon the witness being accepted in the program and signing the Letter of Acknowledgement, will reimburse the police for all reasonable, interim protection expenses they have incurred. Again, this funding does not cover police overtime or travel expenses.

These interim protection measures may be used by police services on a temporary basis only. It is essential that the formal witness protection application be started at the earliest practical opportunity.

NOTE: In an emergency situation, outside of normal office hours or on weekends or holidays, a representative of the Crown Law Office - Criminal who is familiar with the Witness Protection Program, can be contacted through Ontario Provincial Police Headquarters - GHQ Duty N.C.O. at (705) 329-6950.

Attachments: None

Contact: Crown Law Office - Criminal
416-326-4600

Signed by: Paul Lindsay
Assistant Deputy Attorney General
Criminal Law Division

Practice Memoranda are not considered to be confidential and may be given to defence counsellor other interested persons, upon request.

MANDATORY LANGUAGE

All applications for admission to the Witness Protection Program must be submitted to the Ministry of the Attorney General, Crown Law Office - Criminal at 720 Bay Street, 10th Floor, Toronto, Ontario, M5G 2K1 (416-326-4600).

Applications must be reviewed by a designated coordinator in the Crown Law Office - Criminal and the Assistant Deputy Attorney General - Criminal Law, and must be approved by the Deputy Attorney General ***before*** any promises of acceptance into the program or financial commitments are made to the witness.

The prosecuting Crown counsel and the senior independent Crown counsel must ensure that the investigators support the witness protection officers' efforts to manage the witness's protection and restrict their own dealings with the witness accordingly; and

The prosecuting Crown counsel must consult with the reviewing counsel at the Crown Law Office - Criminal if any additional or other issues relating to the witness's participation in the program arise during the course of the prosecution.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos. 38, 43, 46, 47, 48, 49) 1st Session and (Meeting No.14) 2nd Session is tabled.

Respectfully submitted,

Garry Breitkreuz, MP
Chair